HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.19 of 2004 (MS)

M/S Cheema Engineering Services
PVt. Ltd, Bezpur, Udham Singh Nagar
& othes

..... Petitioner

Versus

Bisht Construction Components Industries
Anand Bhavan, Lansdown, Pauri Garhwal
& others

..... Respondents

Sri Jagdish Prasad, Advocate for the petitioner
Standing counsel for the respondents.

Dated: 18.8.2004

Hon. Rajesh Tandon

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the writ of certiorari quashing the order dated 30.12.2003 passed by the respondent no. 11, Additional District judge, Pauri Garhwal.

Brief facts giving rise to the present writ petition are that a suit was filed by the plaintiff respondent being Civil Suit No. 27 of 1996 in the Court of Civil Judge, Kotdwar against M/S Cheema Engineering Services for the recovery of Rs.2,26,750.00. The suit was decreed ex parte on 19.8.2000. The petitioner applied for setting aside the ex parte decree but the Civil Judge vide order dated 22.5.2003 rejected the

application mainly on the ground that the petitioner ought to have moved application under Order 9 Rule 7 C.P.C. The petitioner filed an appeal No.6 of 2003 before the District Judge, Pauri. The Additional District Judge, Pauri vide his order dated 30.12.2003 allowed the appeal and imposed condition to furnish Bank Guarantee of Rupees two lacs and also to deposit costs of Rs.1000/- by 31.1.2004

A Perusal of the order passed by the Addl. District Judge shows that the learned Judge was satisfied with the cause shown by the petitioner for no-appearance in the Court on the date fixed for hearing of the suit. However, the appellant Court has imposed costs. Once the order has been recalled the minimum guarantee is require that in case of decree has been passed the defendant will not run away from the decree.

In view of the aforesaid fact, I direct that the application under Order 9 Rule 13 C.P.C. shall be deemed to be allowed on payment of costs of Rs.1,000/- and further on furnishing an undertaking that the defendant will satisfy the decree, if any, passed against him.

Subject to the aforesaid observation, the writ petition is disposed of. No order as to costs.

(Rajesh Tandon J.)

18.8.2004
*Dhyani